

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF SAINT THOMAS/ST. JOHN

FLORA NICHOLAS and PAUL
GAYTER in their own right and as next
friend of S.G.,

Plaintiffs,

Civ. No. 2001/147MR

v.

WYNDHAM INTERNATIONAL, INC.,
WYNDHAM MANAGEMENT CORP., SUGAR
BAY CLUB AND RESORT, CORP.,
RICK BLYTH and BRIAN HORNBY,

Defendants.

**ORDER ON HORNBY'S MOTION TO RECONSIDER
THE ORDER DATED NOVEMBER 5, 2002**

THIS MATTER came for consideration on Hornby's motion to re-consider the Order dated November 5, 2002. No response is required.

Hornby seeks reconsideration because of "new facts that establish that sanctions are necessary to deter plaintiff's counsel's refusal to comply with the Federal Rules of Civil Procedure" and because "Plaintiff failed to establish that her unilateral termination and failure to file a protective order was justifiable."

Pursuant to LRCi 7.4, a motion to reconsider shall be based on (1) intervening change in controlling law, (2) availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice. Plaintiff has not provided evidence that any of the Rule 7.4 criteria for reconsideration have been met. *See Hansen et. al. v. U.S.A. et. al.*, St. Croix Civ. No. 1999/166 (Order of C.J. Finch, d. Aug. 8, 2000); *Fein v. Peltier*, 1997 WL 180771, *1 (D.V.I.) discussing the appropriateness of motions for reconsideration prior to enactment of Rule 7.4). In *Fein*,

Judge Moore stated:

This Court finds that plaintiff's motion simply requests the Court to rethink what it has already thought through. No newly discovered facts are presented and the new case authority cited does not represent "new" law since those cases could have been cited and discussed in defendant's original memoranda . . .

. . . Motions for reconsideration should not be used as a vehicle for rehashing and expanding upon arguments previously presented or merely as an opportunity for getting in one last shot at an issue that has been decided.

The Court finds that the "new facts" asserted by Hornby are irrelevant to the November 5, 2002 Order which concerned only Ms. Nicholas' deposition. The remainder of Hornby's motion constitutes argument that either was or could have been previously asserted.

Further, even if this motion was appropriate it is premised upon Hornby's incorrect assumption that he had a right to his own seven (7) hours to depose Nicholas and that it was plaintiffs' burden to show cause to limit such time.

Fed. R. Civ. P. 30(d)(2) provides that, "unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. The Court must allow additional time consistent with Rule 26(b)(2) if needed for a fair examination of the deponent or if the deponent or another person, or other circumstance, impedes or delays the examination."

The Advisory Committee Note to the 2000 Amendment to Rule 30(d)(2) notes that "[t]he presumptive duration may be extended or otherwise altered by agreement. Absent agreement, a court Order is needed. The party seeking a court order to extend the examination, or otherwise alter the limitations, is expected to show good cause to justify such an order." (Emphasis added). In discussing the factors to be considered regarding extending the examination, the Advisory Committee states, "In multiple-party cases, the need for each party to examine the

witness may warrant additional time, although duplicative questioning should be avoided and parties with similar interests should strive to designate one lawyer to question about areas of common interest.” (Emphasis added). Thus, it is clear that in the first instance the seven hour limitation is applicable to multiple party opponents but the parties may stipulate otherwise, and failing agreement, the party seeking an extension must move therefor upon a demonstration of good cause. *See, Malec v. Trustees of Boston College*, 208 F.R.D. 23, 24 (D.Mass. 2002); 2001 WL 817853, *4 (N.D.Ill. July 19, 2001).

Accordingly, it was incumbent upon Hornby to reach agreement with Plaintiffs’ and Wyndham’s attorney concerning the duration of Nicholas’ deposition and how defendants would share such allotted time.¹ If the parties were unable to agree Hornby should have filed a motion in such regard prior to Nicholas’ deposition. In any event, Hornby’s motion to resume Nicholas’ deposition offered no description of further relevant matters of inquiry that would warrant an order extending Nicholas’ examination. Likewise the instant motion provides no such information.

Upon consideration, the Court finds that Hornby has provided no basis for reconsideration of the November 5, 2002 Order. Nevertheless, to assure fairness to Hornby and because the additional intrusion to Nicholas and her attorneys is minimal the Court will allow Hornby to resume the deposition of Nicholas for two hours.

Accordingly, it is

¹Although separate parties with separate interests, Hornby and the Wyndham defendants have also shared many common interests and, in fact, have submitted certain motions and responses jointly.

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ORDERED that Hornby's motion is granted in part and that the November 5, 2002 Order on Hornby's motion to resume Flora Nicholas' deposition is amended to provide at Paragraph 1 thereof that Hornby's further examination of Ms. Nicholas shall be limited to two (2) hours.

Hornby's motion is otherwise denied.

Date: November 18, 2002

ENTER:

JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

A T T E S T:
Wilfredo F. Morales, Clerk of Court
by: _____
Deputy Clerk

cc: Daryl Barnes, Esq./ Britain H. Bryant, Esq. (FAX 773-5427)
John Zebedee, Esq. (FAX 775-3300)
Douglas Beach, Esq. (FAX 776-8044)